

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

GRIFFIN SERVICES, INC.

Employer

and

CASE 10-RC-15258

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1922 AFL-CIO¹**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned.

Upon the entire record in this case,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a Georgia corporation with offices and places of business located at the United States Army's Fort Stewart and Hunter Army Air Field military bases near Savannah, Georgia, where it is engaged in the business

¹ Though not entirely clear in the record, it appears that the Petitioner amended the Petition to reflect the Local Union as designated bargaining representative. The Petitioner herein shall at times be referred to as the AFGE.

of facility management and base support services for the United States Department of Defense. The parties stipulated that during the past calendar year, a representative period, the Employer has purchased and received supplies and materials at its Fort Stewart and Hunter Army Air Field facilities valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The only issue to be decided is whether the Petitioner, as contended by the Employer, has a conflict of interest that precludes it from serving as the bargaining representative of the Employer's employees. The Petitioner submits that the Employer cannot meet its burden of demonstrating a conflict so egregious as to make good faith bargaining impractical. For the reasons set forth below, I conclude that the Employer has not met its evidentiary burden of establishing that the Petitioner has a disqualifying conflict of interest that would warrant dismissal of the petition.

The Respective Positions:

At hearing, the Employer submitted various exhibits and testimony which demonstrate that the Petitioner, as a matter of policy, is opposed to the practice of privatization, wherein the government "contracts out" certain operational functions to private sector companies. Subsequent to the filing of the petition, an officer of AFGE Local 1922 wrote a letter in a local newspaper critical of this practice, arguing, inter alia, that only federal employees, not employees of private contractors, should be permitted to work on military bases. This opposition is

² Both the Employer and the Petitioner filed briefs, which were duly considered.

further illustrated by the national union's campaign known as "SWAMP," an acronym for Stop Wasting America's Money on Privatization. SWAMP is actively lobbying for support of the TRAC Act (H.R. 721 & S.1152), which promotes "contracting in" by requiring agencies to subject contractor work to public-private competition when the contractor fails to meet certain performance standards. Thus, the Employer contends, that the Petitioner, with its pronounced "anti-private employee bias," cannot represent the best interests of the bargaining unit employees when one of the stated goals is the abolition of their jobs – i.e. the end of "contracting out."

Contrary to the Employer, the Petitioner contends that the alleged conflict of interest in the instant case is speculative and that the Petitioner has not committed any "overt acts" which show a "clear and present danger" of interfering with the bargaining process. In brief, the Petitioner argues that any protest against contracting out is confined to challenges that cost figures in the bid process are flawed, and that the AFGE does not have standing to file grievances or pursue court action to "rescind or rerun the contracting out bidding process." The Petitioner further contends that its opposition to "contracting out" is "advanced both generally as a union primarily representing federal employees and as matters in the public interest pursuant to the protected rights of federal employees to criticize and petition Congress . . . concerning quality of service and inefficient costs associated generally with contracting out." Such positions against waste and inefficiency, the Petitioner argues, "are the regular grist of any union campaign against practices of management."

Finally, Petitioner notes that the AFGE's national constitution and convention resolutions make clear the Union's policy to "follow the work, and organize the workers of the private contractors, ensuring fair wages, benefits and working conditions for all public and private employees performing work for the U.S. government and D.C. government." To this end, the Petitioner submits in brief that the AFGE represents approximately "a dozen bargaining units of federal contractors" organized under "follow the work" campaigns.

Legal Standard and Analysis:

In general, Congress and the Board have a policy of allowing employees wide latitude in choosing the bargaining representative of their choice, and this policy is only rarely limited:

There is a strong public policy favoring the free choice of a bargaining agent by employees. The choice is not to be lightly frustrated. There is a considerable burden on the non-consenting party, . . . to come forward with a showing that danger of a conflict of interest with the collective bargaining process is clear and present . . . There have been exceptions to the general rule that either side can choose its bargaining representatives freely, but they have been rare and confined to situations so infected with ill-will, usually personal or conflict of interest as to make good faith bargaining impractical. . . ." NLRB v. David Buttrick Co., 399 F.2d 505, 507 (1st Cir. 1968).

Under the circumstances present herein, I find that the Employer has failed to meet its burden of demonstrating a clear and present danger of a conflict that would disqualify Petitioner from representing the Employer's employees. In Catalytic Industrial Maintenance Co., 209 NLRB 641 (1974), cited by the Employer in support of its position, the Board found that the OCAW had committed overt acts seeking the elimination of all bargaining unit jobs at a time

when the OCAW was the certified representative of those employees whose jobs they sought to eliminate. Such is not the case here. The AFGE's national campaign to end the practice of contracting out may or may not bear fruit, and therefore, any suggestion that the Petitioner cannot represent the best interests of the employees herein is merely speculative.³ As the Board noted in CMT, Inc., 333 NLRB No. 151 (2001), "the employees are in the best position to decide if representation by the Petitioner will serve their interests and will make that decision by casting their ballots for or against the Petitioner in the representation election." For the reasons stated herein, and based upon the record as a whole, I find that the Petitioner's representation of the Employer's employees does not constitute a "clear and present danger" to the collective bargaining process and I will not disqualify the Petitioner from representing the employees in the petitioned – for unit.

4. The parties stipulated and I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time employees at the Employer's Fort Stewart and Hunter Army Airfield locations employed as Appliance Mechanic, Automotive Worker, Boiler Tender, Carpenter, Dispatcher, Electrician (Maintenance), Engineering Technician, Fire Alarm Systems Mechanic, General Clerk 1, General Maintenance Worker, Heavy Equipment Mechanic, Heavy Equipment Operator, Lead Heavy Equipment Operator, High Voltage Electrician, HVAC Mechanic, Instrument Mechanic, Laborer (Grounds Maintenance), Lead Boiler Tender, Lead Electrician, Lead HVAC Mechanic, Lead Landfill Operator, Lead Pest Controller, Lead Service Order Dispatcher, Locksmith, Material Coordinator, Material Store/Distribution Lead, Mobile

³ Should an actual conflict of interest arise after the certification of the Petitioner, the Employer may raise that issue at that time through appropriate procedures under the Act.

Equipment Servicer, Motor Vehicle Mechanic, Painter, Pest Controller, Pipefitter, Plumber, Lead Plumber, Production Control Clerk, Roving Engineer, Scale Operator, Sewage Plant Operator, Sheetmetal Worker, Store Worker, Truck Driver (Medium), Water Treatment Plant Operator, and Welder; but excluding confidential employees, professional employees, guards and supervisors as defined in the Act.⁴

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.⁵ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the

⁴ There are approximately 194 employees in the appropriate unit.

⁵ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper objections are filed.

election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the American Federation of Government Employees, Local 1922, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 384 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, 233 Peachtree Street, 1000 Harris Tower, Atlanta, Georgia 30303, on or before **January 18, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. This list may be used initially to determine an adequate showing of interest. It shall be made available to all parties when

the Regional Director shall have determined that an adequate showing of interest in the unit found appropriate has been established.

RIGHT TO REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **January 25, 2002**.

Dated at Atlanta, Georgia, this 11th day of January 2002.

/s/ Martin M. Arlook
Martin M. Arlook, Regional Director
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